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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

JAMIE ANNE PERKINS,

Defendant and Appellant.

H036518

(Santa Cruz County

Super. Ct. No. F19096)

Defendant Jamie Anne Perkins was convicted after a no contest plea to felony possession of methamphetamine for sale. Prior to entry of the plea, she made an unsuccessful motion to suppress seized evidence pursuant to Penal Code section 1538.5.¹ The court suspended sentencing and granted three years' probation.

Defendant challenges the conviction entered on her no contest plea, contending she was illegally detained while she was sitting in her parked car; she argues that the later search that resulted in the discovery of the methamphetamine was therefore unlawful. She also contends that the clerk's minutes fail to properly reflect the court's award to her of 34 days' conduct credits. For the reasons below, we conclude that there was no error in the denial of the suppression motion, but that the clerk's minutes should be modified to clearly reflect the award of conduct credits. Accordingly, we will modify the minute

¹ Further statutory references are to the Penal Code unless otherwise stated.

order to reflect defendant's entitlement to 34 days' conduct credits and will affirm the order of probation as modified.

FACTS²

In the early afternoon on April 20, 2010, Santa Cruz Police Officer Daniel Forbus was on-duty and in a police uniform in a marked patrol car with his partner, Officer Bill Winston. They were patrolling a parking lot behind Kinko's at Spruce and Pacific in downtown Santa Cruz. The parking lot had been a scene of narcotics activity and violence. Officer Forbus observed a white Chevrolet in the back corner of the parking lot, a very secluded area that was the furthest spot from any businesses. He parked the patrol car on Spruce Street, and the two officers walked into the parking lot and made contact with the driver, defendant. (Officer Forbus and Officer Winston approached the driver's and passenger's sides of the car, respectively.)

Officer Forbus asked defendant, who was sitting in the driver's seat with the window partially down, if he could talk with her. She agreed and asked if she was "doing something wrong." He responded that she was not and explained that they were in "a known drug area" and asked if she was parked there for one of the businesses. Defendant responded that she was not and had pulled into the lot to use her cellular phone so that she would not be driving while using it. Officer Forbus introduced himself, asked defendant her name and whether she was on probation or parole. She identified herself as Jamie and asked the officer if he wanted to see her identification. As she asked, she

² The facts are taken from the evidentiary hearing on defendant's motion to suppress. "Since the trial court resolved this matter in favor of the prosecution, for purposes of this proceeding we view the record in the light most favorable to the People's position. In the interest of completeness, however, we note the main points of conflict shown by the record." (*Wilson v. Superior Court* (1983) 34 Cal.3d 777, 780.)

reached for a coin purse and gave Officer Forbus her identification.³ While he was still standing next to the driver's window, Officer Forbus then requested that dispatch determine whether there were any warrants for defendant and whether she was on probation. He learned that there was an outstanding arrest warrant and that defendant was not releasable on her own recognizance.

Officer Forbus explained to defendant that there was a warrant in the system. He initially told her that he "could cite her out" because he had been told the warrant was for a misdemeanor, and she became "a little more nervous." After learning from dispatch that he would need to arrest defendant, Officer Forbus told her this. She became very nervous and her right hand was shaking visibly; her phone rang, she asked if she could answer the call, and Officer Forbus said that she could not. He asked her to place the purse that was on her lap on the front passenger seat. She attempted to comply and then pulled the purse toward her chest. For officer safety reasons, Officer Forbus then asked defendant to hand him the purse and she did so. He placed the purse on the hood of the Chevrolet, asked her to step out of the car, and arrested her. After handcuffing defendant and placing her in the back of the patrol car that Officer Winston had retrieved, Officer Forbus searched the purse.⁴

³ Defendant testified that it was Officer Forbus who asked her if she had any identification and after she responded in the affirmative, he asked to see it. She testified further that she asked him if she could simply leave, and he responded that once her identification had been checked, she "could go as long as everything came back okay." She gave Officer Forbus her identification because "[w]hen [she] was told that [she] couldn't leave until [her] ID was ran [*sic*], [she] felt [she] had no choice but to do that."

⁴ Although not part of the evidence at the hearing on the motion to suppress, Officer Forbus testified at the preliminary hearing that when he searched defendant's purse, he located three baggies containing methamphetamine in a total weight of 38.2 grams, and cash of \$1,125.

After giving Officer Forbus her identification, defendant never asked for it back and did not ask him if she could leave.⁵ Officer Forbus testified that had she asked him at any time before finding out about the outstanding warrant, he would have permitted her to leave. The total amount of time that elapsed from the officers' initial contact with defendant to Officer Forbus's receiving information that there was a warrant for defendant's arrest was less than five minutes.

PROCEDURAL BACKGROUND

Defendant was charged by information with felony possession of methamphetamine for sale (Health & Saf. Code, § 11378). Defendant filed a motion to suppress evidence pursuant to section 1538.5. The People opposed the motion. After an evidentiary hearing, the court denied the motion to suppress.

Defendant pleaded no contest to one count of possession of methamphetamine for sale, conditioned on her not being sentenced to serve a prison term. On January 20, 2011, the court suspended imposition of the sentence, placed defendant on probation for three years, conditioned on her serving 270 days in county jail. Defendant filed a timely notice of appeal of the denial of the motion to suppress. The denial of the suppression motion may be challenged by an appeal from the judgment entered after defendant's guilty or no contest plea. (§ 1538.5, subd. (m); *People v. Lilienthal* (1978) 22 Cal.3d 891, 896.)

DISCUSSION

I. *Standard of Review*

"An appellate court's review of a trial court's ruling on a motion to suppress is governed by well-settled principles. [Citations.] [¶] In ruling on such a motion, the trial court (1) finds the historical facts, (2) selects the applicable rule of law, and (3) applies

⁵ Defendant testified that she "offered repeatedly to leave" if there was a problem with her being there.

the latter to the former to determine whether the rule of law as applied to the established facts is or is not violated. [Citations.] ‘The [trial] court’s resolution of each of these inquiries is, of course, subject to appellate review.’ [Citations.] [¶] The court’s resolution of the first inquiry, which involves questions of fact, is reviewed under the deferential substantial-evidence standard. [Citations.] Its decision on the second, which is a pure question of law, is scrutinized under the standard of independent review. [Citations.] Finally, its ruling on the third, which is a mixed fact-law question that is however predominantly one of law, . . . is also subject to independent review.” (*People v. Williams* (1988) 45 Cal.3d 1268, 1301; see also *People v. Ayala* (2000) 23 Cal.4th 225, 255.) All presumptions favor the trial court’s exercise of its power to judge the credibility of the witnesses, resolve any conflicts in the testimony, weigh the evidence, and draw factual inferences, “ ‘and the trial court’s findings on such matters, whether express or implied, must be upheld if they are supported by substantial evidence.’ ” (*People v. Leyba* (1981) 29 Cal.3d 591, 596-597, quoting *People v. Lawler* (1973) 9 Cal.3d 156, 160.)

Based upon its factual findings, the trial court has the duty to determine whether “the search was unreasonable within the meaning of the Constitution.” (*People v. Lawler, supra*, 9 Cal.3d at p. 160.) This issue is a question of law. Therefore, we must measure the facts, as found by the trial court, against the constitutional standard of reasonableness for the search and/or seizure. (*Ibid.*; *People v. Leyba, supra*, 29 Cal.3d at p. 597.)

Under the California Constitution, article I, section 28, subdivision (d), the reasonableness of the search or seizure is measured against federal constitutional standards. (*People v. Woods* (1999) 21 Cal.4th 668, 674.) Only evidence that is the product of an unreasonable search and seizure in violation of federal standards shall be suppressed. (*In re Lance W.* (1985) 37 Cal.3d 873, 890.)

II. *Denial of Defendant's Motion to Suppress*

A. *Parties' Contentions*⁶

Defendant argues that the court erred in denying her motion to suppress. She contends that her encounter with “Officer Forbus became an illegal detention when Officer Forbus seized [defendant’s] driver’s license” In order to detain defendant, there must have been reasonable suspicion based upon her activities that she was involved in criminal activity. Since there were no facts supporting such reasonable suspicion here (defendant argues), Officer Forbus’s detention of her was unlawful, and any evidence thereafter obtained as a result of the unlawful detention was inadmissible. In addition, defendant contends that under *People v. Brendlin* (2008) 45 Cal.4th 262, the taint of the illegal detention was not attenuated by Officer Forbus’s later discovery that there was an outstanding arrest warrant. Defendant asserts that under *Brendlin, supra*, 45 Cal.4th at page 269, attenuation is determined by looking at “[1], the temporal proximity of the unlawful seizure to the subsequent search of the defendant’s person or vehicle; [2], the presence of intervening circumstances[;] and [3], the flagrancy of the official misconduct in effecting the unlawful seizure. [Citations.]” Defendant argues that because “ ‘the

⁶ Much of defendant’s argument centers on the claim of ineffective assistance of counsel based upon her trial attorney’s failure to introduce evidence at the suppression hearing that, after defendant’s allegedly unlawful detention and arrest, methamphetamine was seized as a result of a search of her purse. (See fn. 4, *ante*.) An ineffective assistance of counsel claim requires a showing that “counsel’s action was, objectively considered, both deficient under prevailing professional norms and prejudicial.” (*People v. Seaton* (2001) 26 Cal.4th 598, 666, citing *Strickland v. Washington* (1984) 466 U.S. 668, 687.) Because we conclude that the court did not err in its denial of the suppression motion, even were we to assume that trial counsel’s representation fell below an objective standard of reasonableness, such assumed deficient performance was not prejudicial. It is therefore unnecessary to detail or address the arguments regarding the ineffective assistance claim. (See *In re Cox* (2003) 30 Cal.4th 974, 1019-1020 [court may dispose of ineffective assistance claim without addressing whether counsel’s performance was deficient if no prejudice is established].)

flagrancy and purposefulness of the police misconduct’ [(*Brendlin*, at p. 271)] . . . is generally considered the most important [factor,]” and the police had no justification here for the detention—which was simply “[a] fishing expedition”—the attenuation doctrine is not applicable here.

The Attorney General responds that the determination of whether a detention has occurred is made by assessing all of the circumstances in the particular case. Moreover, an officer’s questioning concerning a person’s identity or a request for identification, of itself, does not constitute a detention. Here (the Attorney General argues), based upon all of the circumstances—including the brief nature of the encounter, the nonthreatening conduct of the police officers, and defendant’s volunteering of her identification to the police—the encounter between the police and defendant was consensual, and not a detention.

B. *Detentions Generally*

We note initially that “there are basically three different categories or levels of police ‘contacts’ or ‘interactions’ with individuals, ranging from the least to the most intrusive. First, there are . . . ‘consensual encounters’ [citation], which are those police-individual interactions which result in no restraint of an individual’s liberty whatsoever . . . and which may properly be initiated by police officers even if they lack any ‘objective justification.’ [Citation.] Second, there are what are commonly termed ‘detentions,’ seizures of an individual which are strictly limited in duration, scope and purpose [Citation.] Third, and finally, there are those seizures of an individual which exceed the permissible limits of a detention, seizures which include formal arrests and restraints on an individual’s liberty which are comparable to an arrest, and which are constitutionally permissible only if the police have probable cause to arrest the individual for a crime.” (*Wilson v. Superior Court*, *supra*, 34 Cal.3d at p. 784, quoting *Florida v. Royer* (1983) 460 U.S. 491, 498-499, 501, 506.)

An encounter between police and a private citizen is deemed consensual if the citizen, “as a reasonable person would feel free ‘to disregard the police and go about his business.’ ” (*Florida v. Bostick* (1991) 501 U.S. 429, 434.) “The test is necessarily imprecise, because it is designed to assess the coercive effect of police conduct, taken as a whole, rather than to focus on particular details of that conduct in isolation. Moreover, what constitutes a restraint on liberty prompting a person to conclude that he is not free to ‘leave’ will vary, not only with the particular police conduct at issue, but also with the setting in which the conduct occurs.” (*Michigan v. Chesternut* (1988) 486 U.S. 567, 573.)

Thus, the United States Supreme Court has explained consensual encounters with the police—as contrasted with lawful detentions—as follows: “[L]aw enforcement officers do not violate the Fourth Amendment by merely approaching an individual on the street or in another public place, by asking him if he is willing to answer some questions, by putting questions to him if the person is willing to listen [Citations.] Nor would the fact that the officer identifies himself as a police officer, without more, convert the encounter into a seizure requiring some level of objective justification. [Citation.] The person approached, however, need not answer any question put to him; indeed, he may decline to listen to the questions at all and may go on his way. [Citations.] He may not be detained even momentarily without reasonable, objective grounds for doing so; and his refusal to listen or answer does not, without more, furnish those grounds.” (*Florida v. Royer, supra*, 460 U.S. at pp. 497-498; see also *U.S. v. Mendenhall* (1980) 446 U.S. 544, 553 [“ ‘[T]here is nothing in the Constitution which prevents a policeman from addressing questions to anyone on the streets,’ [citation]. Police officers enjoy ‘the liberty (again, possessed by every citizen) to address questions to other persons’ [citation], although ‘ordinarily the person addressed has an equal right to ignore his interrogator and walk away.’ [Citation.]”].)

Our high court has noted that “[c]ircumstances establishing a seizure might include any of the following: the presence of several officers, an officer’s display of a weapon, some physical touching of the person, or the use of language or of a tone of voice indicating that compliance with the officer’s request might be compelled. [Citations.]” (*In re Manuel G.* (1997) 16 Cal.4th 805, 821; see also *In re Christopher B.* (1990) 219 Cal.App.3d 455, 460.) All of the circumstances involved in the encounter must be evaluated to decide whether a reasonable person would have concluded from the police conduct that he or she was not free to leave or decline the requests of the police. (*Florida v. Bostick*, *supra*, 501 U.S. at p. 439; see also *People v. Bouser* (1994) 26 Cal.App.4th 1280, 1287 [courts must “assess the totality of the circumstances in determining whether a seizure has occurred”].) And “[t]he officer’s uncommunicated state of mind and the individual citizen’s subjective belief are irrelevant in assessing whether a seizure triggering Fourth Amendment scrutiny has occurred.” (*In re Manuel G.*, at p. 821.)

C. Discussion of Claim of Error

As has been reiterated by our high court, consensual encounters “ ‘ “may properly be initiated by police officers even if they lack any ‘objective justification.’ ” ’ ” (*People v. Hughes* (2002) 27 Cal.4th 287, 327.) A police officer’s action of approaching a person on the street to ask a few questions by itself does not constitute a detention. (*Florida v. Bostick*, *supra*, 501 U.S. at p. 434; *In re Manuel G.*, *supra*, 16 Cal.4th at p. 821.) Moreover, “it is quite clear police do not need to have a reasonable suspicion in order to ask questions or request identification.” (*People v. Lopez* (1989) 212 Cal.App.3d 289, 291; see also *INS v. Delgado* (1984) 466 U.S. 210, 216 [“interrogation relating to one’s identity or a request for identification by the police does not, by itself, constitute a Fourth Amendment seizure”].)

The evidence presented at the hearing supported the court's finding that the encounter between Officers Forbus and Winston and defendant was consensual. The manner in which the officers approached defendant was not coercive, and they made no overt demonstrations of authority. Nor did either of the officers approach defendant in a quick or menacing manner. Officer Forbus and his partner made no threatening gestures, made no demands, and did not block defendant's progress. (See *People v. Franklin* (1987) 192 Cal.App.3d 935, 940 [finding no detention, noting that officer did not block the defendant's way and made no demands upon him].)

Officer Forbus explained to defendant why he had contacted her—that she was parked “in a known drug area”—and reassured her that she had done nothing wrong. He asked defendant her name after he had identified himself, and she—without solicitation from Officer Forbus—offered and produced her identification. Although defendant's testimony was to the contrary on this point—and that Officer Forbus had asked her to provide identification—there was substantial evidence to support the court's implied finding that defendant volunteered her identification to Officer Forbus. We of course defer to the trial court in its resolution of factual conflicts. (*People v. Leyba, supra*, 29 Cal.3d at pp. 596-597.) Further, after defendant provided her identification to Officer Forbus, she did not ask for it back and did not ask if she could leave. And the total length of time from the officers' initial contact with defendant and Officer Forbus's receipt of the information concerning the outstanding arrest warrant was less than five minutes.

These circumstances considered together lead us to conclude that the encounter between the officers and defendant was a consensual one. The contact did not have the circumstances of a potential “seizure” identified by our high court, such as “an officer's display of a weapon, some physical touching of the person, or the use of language or of a tone of voice indicating that compliance with the officer's request might be compelled. [Citations.]” (*In re Manuel G., supra*, 16 Cal.4th at p. 821.) Therefore, based upon the

testimony of Officer Forbus, the court properly found that the encounter was consensual, i.e., the circumstances were such that a citizen, “as a reasonable person would feel free ‘to disregard the police and go about his business.’ ” (*Florida v. Bostick, supra*, 501 U.S. at p. 434.)

Defendant, however, argues that under the circumstances presented here, Officer Forbus’s retention of her identification to conduct a warrants check constituted a detention. In support of this position, she relies on *People v. Spicer* (1984) 157 Cal.App.3d 213 (*Spicer*) and *People v. Castaneda* (1995) 35 Cal.App.4th 1222 (*Castaneda*). Defendant’s contention is without merit.

In *Spicer, supra*, 157 Cal.App.3d at page 216, the defendant was a passenger in a vehicle that officers had legitimately stopped after having observed it weaving multiple times. After the officers had the driver exit the car to perform a field sobriety check, one officer approached the defendant and asked her to produce her driver’s license; as she searched her purse, the officer saw a handgun and directed her to keep her hands out of the purse and exit the car. (*Ibid.*) The appellate court concluded that the acts of the officer directed toward the defendant constituted a detention. (*Id.* at p. 217.) It based this holding on the specific circumstances of the case, including the location (residential neighborhood) and time (1:30 a.m.) of the encounter; the fact that she was approached by a uniformed officer immediately after the car in which she was a passenger had been stopped; and the officer gave her no explanation for contacting her or the need for providing identification before he requested that she produce her driver’s license. (*Id.* at pp. 218-219.)

Spicer is readily distinguishable. Here, the encounter—occurring in the middle of the day and in a public parking lot—did not begin with a traffic stop in which police had already initiated direct contact with another occupant of the car. Officer Forbus explained to defendant why he was making contact with her and did not direct her to produce

identification. Unlike *Spicer*, the circumstances here were not “pregnant with coercion . . . amount[ing] to an unlawful seizure.” (*Spicer, supra*, 157 Cal.App.3d at p. 220.)

In *Castaneda, supra*, 35 Cal.App.4th at pages 1225 to 1226, the defendant was contacted by police while he was a passenger in an illegally parked car; the officer inquired as to the car’s owner and requested identification from the defendant. After the defendant complied and the officer determined that there was an outstanding warrant for the defendant’s arrest, he was arrested. (*Id.* at p. 1226.) The court held neither the officer’s approaching the defendant to begin talking with him nor the request for identification constituted a detention. (*Id.* at p. 1227.) It found, however, that once the defendant gave his identification card to the officer, “a reasonable person would not have felt free to leave” and the defendant was at that point detained. (*Ibid.*)

Because the officers here did not request that defendant provide identification, *Castaneda* is likewise distinguishable. In any event, *Castaneda* does not stand for the proposition—as implied by defendant—that a detention results merely from the police officer’s taking possession of a defendant’s identification card. (See *People v. Bouser* (1994) 26 Cal.App.4th 1280, 1287 [rejecting bright-line rule that once police initiate warrants check, a consensual encounter is necessarily transformed into a detention].)

We conclude that the court below properly found, based upon substantial evidence before it, that the encounter between defendant and Officers Forbus and Winston was consensual and did not constitute a detention. Accordingly, once the officers learned that there was an outstanding warrant for defendant’s arrest, the officers acted properly in arresting her. The court properly denied defendant’s motion to suppress.

III. Award of Conduct Credits

The court gave defendant credit for the 35 days that she had served in jail. Defense counsel also requested that defendant receive conduct credits as a “half-time

case,” based upon the date of the offense, and the court granted the request as reflected in the reporter’s transcript and clerk’s minutes.⁷ But defendant complains that the minute order erroneously fails to provide that defendant is entitled to conduct credits under section 4019. She argues that under the version of that statute applicable at the time of the commission of the crime (April 2010), she was entitled to conduct credits under the formula that “a term of four days will be deemed to have been served for every two days spent in actual custody.” (Former § 4019, subd. (f), as amended by Stats. 2009-2010, 3d Ex.Sess., ch. 28, § 50, p. 4428, eff. Jan. 25, 2010.) The Attorney General agrees that it would be appropriate to amend the minute order to clearly reflect the award of conduct credit.

Where the clerk’s minutes or abstract of judgment do not accurately reflect the oral pronouncement, the appellate court may order them corrected. (*People v. Zackery* (2007) 147 Cal.App.4th 380, 385-386, 388, 389; *People v. Rowland* (1988) 206 Cal.App.3d 119, 123-124.) Here, although the court indicated in its oral pronouncement that it accepted defense counsel’s request that it be considered a “half-time case,” the minutes do not clearly reflect the court’s granting of conduct credits under the then-applicable formula of section 4019, subdivision (f). Accordingly, we will order that clerk’s minutes be modified to state that defendant is entitled to conduct credits of 34 days, and that she shall therefore have a total of 69 days’ credit.

DISPOSITION

The minute order dated January 20, 2011, is ordered modified under paragraph 02 to read as follows: “02) Be confined in County Jail 270 days (Ct(s) 1). Defendant’s

⁷ Defense counsel used “half-time case” as a short-hand reference to conduct credits. It is clear to this court that this was a request for conduct credits at the rate then existing for offenses committed before the amendment to section 4019 that became effective in September 2010.

credit for time served is 35 days actual custody, plus 34 days' conduct credit pursuant to Penal Code section 4019, subdivision (f), for a total of 69 days' credit." As modified, the order of probation is affirmed.

Duffy, J.*

I CONCUR:

Bamattre-Manoukian, Acting P.J.

Mihara, J.

* Retired Associate Justice of the Court of Appeal, Sixth Appellate District, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.